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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,168	07/31/2001	Marshall R. Moore	1287.02	9029

21901 7590 06/14/2002

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,168

Applicant(s)

MOORE, MARSHALL R.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The use of the trademarks KEVLAR and MYLAR has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The amendment filed April 15, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: an aramid polymer fiber and a polyethylene terephthalate polymer film material.

Applicant is required to cancel the new matter in the reply to this Office Action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4, 5 and 16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure doesn't support the polyethylene terephthalate (PET) polymer film material which is now being used to represent Mylar. The previous reference had been to high-temperature polyester film material. The original disclosure doesn't support the aramid polymer fiber material which is now being used to represent Kevlar. The previous reference had been to high-temperature polyester film material.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 16 are indefinite because they claim a substantially uniform interstitial area between the inner and outer tanks then the claim recites, in contradiction, that the area is filled with two different materials, an insulating foam material and a fire resistant textile material. "Space" wasn't narrowly interpreted to mean "empty space" as applicant suspected. Rather, the rejection is based upon the definition of "uniform" which means unvaried, consistent. Two different materials in the interstitial area makes the area varied and not consistent and therefore, not uniform.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanai et al. (Sanai).

Sanai discloses a luggage container which has structure to store flammable and combustible liquids and has secondary containment and which is inherently capable of performing as an aboveground storage tank, the container as shown in Fig. 4a comprises an inner primary tank (432)(metal), an outer secondary tank (426)(metal), an insulating foam (430) and a

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polymer material (428)(from a polymeric or plastic material, or from a composite such as carbon fiber of fiberglass) which has inherent fire resistant characteristics, the polymer material sandwiches between the foam material (430) and the outer secondary tank. The container may be used as a tank to provide fuel to a generator. The container provides a support means to form a base for a generator.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarvey in view of Sanai and Silverman et al. (Silverman).

McGarvey discloses an above ground storage tank for flammable liquids having a secondary containment capability, the tank comprising an inner primary tank for storing liquid, an outer secondary tank encasing the primary tank and defining an interstitial space therebetween, an insulating foam material disposed in the interstitial space and a fire resistant material sandwiched between the foam material and the inner primary tank. McGarvey discloses the invention except for the fire resistant material is not a polymer and is not sandwiched between the foam material and the outer secondary tank. It would have been obvious to modify the position of the fire resistant material to be relocated in the interstitial space between the foam material and the outer secondary tank if it was more important to protect the inner surface of the outer secondary tank from fire and a resulting explosion as would be necessary if fuel had leaked from the inner tank into the interstitial space. Furthermore, Sanai teaches a container with a wall

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structure having a fire resistant composite which fits within an interstitial area comprised of an inner foam (430) and an outer fire resistant polymer material. Silverman teaches a fire resistant polymer composite having two layers of foam which sandwich a fire resistant polymer film. It would have been obvious to either replace or reconfigure the composite which lies within the interstitial space to have an inner layer of foam and an outer fire resistant polymer layer in order to optimize the fire resistance of the polymer material as well as the material consistency and thermal efficiency of the foam.

The specific teachings of foam materials include foamed concrete, VERMICULITE, STYROFOAM, urethane foam, pumice and FENDOLITE. It would have been obvious to modify the foam material to be polymethyl or rubber since these are equivalent and it is a matter of design choice as to which material is best. It would have been obvious to use MYLAR, polyethylene terephthalate (PET) or polyester film or KEVLAR, aramid polymer fiber, or polyester film as the fire resistant material since these polymer materials are equivalent to the polymer materials of Sanai and Silverman.

The leak sensor, first venting means, and second venting means are provided by the fittings at the top of the tank. The tank is inherently capable of use with a generator. The top of the tank provides a support means forming a base for a generator.

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication of earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703) 308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

June 12, 2002